

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTONIO DWAYNE HALBERT,

Petitioner,

v.

Case No. 1:07-CV-449

CARMEN D. PALMER,

HON. GORDON J. QUIST

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court has before it Petitioner's Objections to the report and recommendation dated June 29, 2007, in which Magistrate Judge Brenneman recommended that Petitioner's habeas petition be dismissed pursuant to Rule 4 because the petition fails to state a cognizable federal habeas claim. The magistrate judge further recommended that a certificate of appealability be denied. After conducting a *de novo* review of the report and recommendation, the Court concludes that the report and recommendation should be adopted by the Court.

The magistrate judge concluded that Petitioner failed to raise a cognizable federal claim because Petitioner's claim that the trial court erred in imposing consecutive sentences presents an issue of state, not federal, law. In his objections, Petitioner discusses principles relating to exhaustion of habeas claims and the applicable standards a reviewing federal court must apply in a habeas case, but he fails to cite any authority to contradict the magistrate judge's well-supported conclusion that Petitioner's claim presents only an issue of state law. Accordingly, Petitioner's objections are without merit.

Under 28 U.S.C. § 2253(c)(2), the Court must also determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a “substantial showing of a denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The Sixth Circuit has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001). Rather, the district court must “engage in a reasoned assessment of each claim” to determine whether a certificate is warranted. *Id.* at 467. Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595 (2000). *Murphy*, 263 F.3d at 467. Consequently, this Court has examined Petitioner’s claims under the *Slack* standard.

Under *Slack*, 529 U.S. at 484, 120 S. Ct. at 1604, to warrant a grant of the certificate, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” For the reasons stated above, the Court finds that reasonable jurists could not find that this Court’s dismissal of Petitioner’s claim was debatable or wrong. Thus, the Court will deny Petitioner a certificate of appealability. Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation issued June 29, 2007 (docket no. 5) is **APPROVED AND ADOPTED** as the Opinion of this Court.

IT IS FURTHER ORDERED that Petitioner’s habeas corpus petition is **DISMISSED** pursuant to Rule 4 because Petitioner has failed to state a cognizable federal habeas claim.

IT IS FURTHER ORDERED that a **certificate of appealability** is **DENIED** by this Court.

This case is **concluded**.

Dated: August 8, 2007

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE